

No.11737

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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MILO W. BEKINS and REED J. BEKINS, as  
Trustees under the Last Will and Testament of  
Martin Bekins, deceased,

Appellants,

vs.

COMPTON-DELEVAN IRRIGATION  
DISTRICT,

Appellee.

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SUPPLEMENTAL  
Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Northern Division

MAR -4 1948

PAUL P. O'BRIEN,  
Clerk



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11737

MILO W. BEKINS and REED J. BEKINS,  
as Trustees under the last will and testament of  
Martin Bekins, deceased,

Appellants,

vs.

COMPTON-DELEVAN IRRIGATION  
DISTRICT,

Appellee.

STIPULATION

It Is Hereby Stipulated between appellants and appellee that certain two documents which were omitted from record on appeal herein, be added to the record on appeal herein, they being the following, to-wit:

I.

“Notice of Application” of Compton-Delevan Irrigation District, to have interpreted the order of the District Court granting motion to modify final decree and amending said order to conform to the interpretation intended to be placed thereon by the Court, together with the “Authorities on Motion,” to which is attached the “Affidavit of Jerome D. Peters,” which affidavit, however, is included in the record (R. 15-25).

## II.

Proposed "Order Granting Motion to Modify Final Decree" dated January ....., 1946, which order was not signed by the District Court, and from which the concluding sentence was deleted.

It was further stipulated that these papers may be forwarded to United States Circuit Court of Appeals, Ninth Appellant Circuit, as a "Supplemental Transcript of Record."

Dated January 23, 1948.

/s/ W. COBURN COOK,  
Attorney for Appellants.  
PETERS & PETERS,  
Attorneys for Appellees.

So ordered:

/s/ FRANCIS A. GARRECHT,  
Senior United States  
Circuit Judge.

[Endorsed]: Filed Jan. 26, 1948.



PETERS & PETERS,

304 Broadway,  
Chico, California,

Attorneys for Compton-Delevan  
Irrigation District.

In the District Court of the United States for the  
Northern District of California, Northern  
Division

No. 9870

In the Matter of

COMPTON-DELEVAN IRRIGATION DIS-  
TRICT (In Proceedings for Confirmation of  
Plan of Composition of Outstanding Indebtedness)

### NOTICE OF APPLICATION

To Milo W. Bekins and Reed J. Bekins, as trustees  
under the Last Will and Testament of **Martin**  
Bekins, deceased, and to W. Coburn Cook, Esq.,  
attorney for said trustees:

You and each of you will please take notice that  
on Monday, the 25th day of November, 1946, at the  
hour of 2:00 o'clock p.m. of that day, or as soon  
thereafter as counsel may be heard, Compton-  
Delevan Irrigation District will apply to the Court  
for an order interpreting the order of the above-  
entitled court granting motion to modify final de-

cree, and amending said order to conform to the interpretation intended to be placed thereon by the Court, and in the interpreting thereof and in amending the order to conform with the interpretation, that the second paragraph thereof be amended and changed to read as follows, to-wit:

Now, Therefore, upon application of said movents It Is Ordered, Adjudged and Decreed that the final decree entered herein August 17, 1942, be and the same is hereby modified to extend the time for deposit and surrender of said bonds as herein provided and that the said trustees may, within thirty (30) days after this order becomes final present to the Treasurer of Compton-Delevan Irrigation District, the petitioner herein, bonds numbers 409, 410, 411, 413, 414 and 415 of the original issue of bonds of said district, and bonds numbers R115, R136, R137, R138, and R139 of the Refunding issue of said District, each of the par value of \$1000, together with appurtenant unpaid coupons maturing January 2, 1932, and subsequent, and upon such presentation and the surrender of said bonds and coupons with deductions for missing coupons, the said Compton-Delevan Irrigation District shall pay to the said trustees the sum of \$2200.00 upon said bonds and coupons with deductions for missing coupons, if any be missing, as provided in the said final decree and in the interlocutory decree heretofore entered herein, and shall also pay to said trustees the sum of \$161.60 costs taxed herein, or upon the failure of said

Compton-Delevan Irrigation District, petitioner herein, to make such payment upon such presentation and surrender of said bonds and coupons the said trustees shall no longer be bound by the terms of the final decree or interlocutory decree herein, excepting that they shall be bound by the composition figure determined by said decrees to be the maximum figure the District is able to pay, to-wit, twenty cents on each one dollar.

Also in such an order to provide that upon the payment of the composition figure of \$2200.00 plus the sum of \$161.60 costs, within five days into the registry of this Court, and notification to said trustees of such fact, that the said trustees shall have sixty days in which to present and surrender their said bonds and accept the said settlement money of \$2200.00; that, however, they shall recover their costs of \$161.60 irrespective of whether they present their bonds or not.

The grounds of said motion are that the trustees interpret the order to mean that if upon presentation of their bonds to the District to be surrendered upon payment of the composition figure, and costs, if the same were not paid within thirty days, that they should then be relieved from the provisions of the interlocutory and final decree completely and contend that having presented their bonds and not being paid within thirty days from such presentation that they are so relieved; they are now asking

in these proceedings through motion filed, for the right to sue upon the bonds for their full face value.

Movents contend that such a result was not in the contemplation of or intended by the Court and that the intention of the Court was that if the said trustees were not paid within said thirty days, that then they should have rights given them by law to collect the composition figure and costs.

This application will be based upon this written notice, upon all the records and files in the action of Milo W. Bekins and Reed J. Bekins, as trustees under the last will and testament of Martin Bekins, deceased, Appellants, vs. Compton-Delevan Irrigation District, Appellee, pending in this Court and being number 10934, on all of the papers and records on file in the above matter and upon the affidavit of Jerome D. Peters, Jr., attached hereto and served herewith.

Dated November 8, 1946.

PETERS & PETERS,

Attorneys for Compton-

Delevan Irrigation District.

Authorities on Motion

Chapter IX Bankruptcy Act of the United States;

Title 28, Section 118, U. S. C.;

Rules 4, 55 and 60, Federal Rule Civil Procedure;

Wright v. Board of Public Institutions, 142 Fed. (2d) 577.

Whereas time limits are prescribed by various sections of the bankruptcy act for setting aside or modifying an arrangement or other settlement, or order, e.g., Bankruptcy Act, Section 386, it would appear that there is no specific time limit within which a decree must be modified under Chapter IX.

See also

Thumness v. Vonhoffman, 109 Fed. (2d) 291;

In re Parent, 30 Fed. Supp. 943;

Rerat v. Fisk Tire, 28 Fed. (2d) 607;

In re Brecher, 4 Fed. (2d) 1001;

Lerner v. First Wisconsin National Bank,  
294 U. S. 116, 55 S. C. 360.

[Endorsed]: Filed Nov. 14, 1946.

[Title of District Court and Cause.]

### NOTICE OF LODGEMENT

To Compton-Delevan Irrigation District and  
Jerome D. Peters and George R. Freeman,  
Attorneys:

You and each of you will please take notice that on or about January 19, 1946, there was lodged with the Clerk of the Above Entitled Court at the Court-house in Sacramento, California, a proposed order granting motion to modify final decree (copy of which is annexed), in duplicate and that you are required under Rule 5(d) to approve or disapprove the same as to form as provided in said Rule.

W. COBURN COOK,  
Attorney for Milo W. Bekins and Reed J. Bekins,  
as trustees appointed by the will of Martin  
Bekins, Deceased.

[Endorsed]: Filed Jan. 26, 1946.

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[Title of District Court and Cause.]

### PROPOSED ORDER GRANTING MOTION TO MODIFY FINAL DECREE

In this matter the Mandate of the United States Circuit Court of Appeals for the Ninth Circuit having come down directing this court to grant the motion of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins,



Deceased, for an order requiring the Compton-Delevan Irrigation District to pay said trustees \$2200.00 upon surrender and deposit of \$11,000 principal amount of bonds of said district, with appurtenant coupons, and to modify the terms of the final decree entered herein to extend the time for depositing said bonds and to relieve the said parties from their default, if any herein,

Now, Therefore, upon application of said movents It Is Ordered, Adjudged and Decreed that the final decree entered herein August 17, 1942, be and the same is hereby modified to extend the time for deposit and surrender of said bonds as herein provided and that the said trustees may, within thirty (30) days after this order becomes final present to the Treasurer of Compton-Delevan Irrigation District, the petitioner herein, bonds numbers 409, 410, 411, 413, 414 and 415 of the original issue of bonds of said district, and bonds numbers R115, R136, R137, R138, and R139 of the Refunding issue of said District, each of the par value of \$1000, together with appurtenant unpaid coupons maturing January 2, 1932, and subsequent, and upon such presentation and the surrender of said bonds and coupons, the said Compton-Delevan Irrigation District shall pay to the said trustees the sum of \$2200.00 upon said bonds and coupons with deductions for missing coupons, if any be missing, as provided in the said final decree and in the interlocutory decree heretofore entered herein, and shall also pay to said trustees the sum of \$161.60 costs

taxed herein, or upon the failure of said Compton-Delevan Irrigation District, petitioner herein, to make such payment upon such presentation and surrender of said bonds and coupons the said trustees shall no longer be bound by the terms of the final decree or interlocutory decree herein, and the provisions of said decrees restraining them from pursuing their ordinary remedies upon said bonds in the State or Federal Courts shall be vacated and set aside and permission is granted to said trustees to take proceedings for the collection of said bonds in full and enforcement of their rights thereon free from the restraint of the interlocutory and final decrees of this court in these proceedings.

Dated January ....., 1946.

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Judge,

U. S. District Court.

Approved as to Form as provided in Rule 5(d)  
January 21st, 1946.

~~—GEORGE R. FREEMAN,—~~

Attorney for Petitioner.

Disapproved as to Form as provided in Rule 5(d)  
for the reason

January 21, 1946.

GEORGE R. FREEMAN,

Attorney for Petitioner.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO SUPPLEMENTAL TRAN-  
SCRIPT OF RECORD

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 8, inclusive, contain a full, true and correct transcript of certain records in the matter of the Compton-Delevan Irrigation District, No. 9870, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with a Stipulation filed in the United States Court of Appeals for the Ninth Circuit in case number 11737.

I further certify that the cost of preparing and certifying the foregoing Supplemental Transcript is the sum of Two and 80/100 (\$2.80), and that the same has been paid to me by the attorney for the appellants herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 18th day of February, A.D. 1948.

[Seal]

C. W. CALBREATH,  
Clerk.

By /s/ F. M. LAMPERT,  
Deputy Clerk.

[Endorsed]: No. 11737. United States Circuit Court of Appeals for the Ninth Circuit. Milo W. Bekins and Reed J. Bekins, as Trustees under the Last Will and Testament of Martin Bekins, deceased, Appellants, vs. Compton-Delevan Irrigation District, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed February 19, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.